

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ERIK J. VICARIO,	)	CASE NO. 1:20-cv-01344
	)	
Petitioner,	)	JUDGE DAVID A. RUIZ
	)	
V.	)	
	)	
DOUGLAS FENDER, WARDEN,	)	
	)	<b>MEMORANDUM OPINION AND ORDER</b>
Respondent.	)	
	)	

This matter is before the Court on the Report and Recommendation of Magistrate Judge Thomas M. Parker. (R. 10).<sup>1</sup> Petitioner Erik J. Vicario, through counsel, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on June 19, 2020, raising five grounds for relief. (R. 1). On March 9, 2021, Respondent filed a Return of Writ. (R. 8). On March 16, 2021, Petitioner filed what was termed a Reply to the Return. (R. 9).

On November 28, 2022, the Magistrate Judge issued his Report and Recommendation (R&R) that considered each of Petitioner's claims and recommended they be dismissed in part and denied in part. (R. 10). The R&R also stated that any objections to the Report and Recommendation must be filed within fourteen (14) days after being served with a copy of that document and that failure to file objections within the specified time may forfeit the right to appeal the District Court's order. *Berkshire v. Dahl*, 928 F.3d 520, 530-30 (6th Cir. 2019). *Id.*, Page ID No. 1102. To date, Petitioner has not filed any objections to the Report and Recommendation.

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<sup>1</sup> This case was referred to the magistrate judge pursuant to Local Rule 72.2.

## **I. Standard of Review for a Magistrate Judge's Report and Recommendation**

The applicable standard of review of a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court conducts a *de novo* review. Fed. R. Civ. P. 72(b)(3) states:

*Resolving Objections.* The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b)(3) addresses only the review of reports to which objections have been made but does not specify any standard of review for those reports to which no objections have lodged. The Advisory Committee on Civil Rules commented on a district court's review of unopposed reports by magistrate judges. Regarding Rule 72(b), the Advisory Committee stated: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72 Advisory Committee's notes (*citing Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9<sup>th</sup> Cir. 1974), *cert. denied*, 419 U.S. 879).

"In the Sixth Circuit, failure to object constitutes a forfeiture." *Schuster v. Comm'r of Soc. Sec. Admin.*, 2022 WL 219327, at \*1 (N.D. Ohio Jan. 25, 2022) (Lioi, J.) (*citing Berkshire v. Beauvais*, 928 F.3d 520, 530 (6<sup>th</sup> Cir. 2019) ("We clarify that forfeiture, rather than waiver, is the relevant term here.")); *see also Thomas v. Arn*, 474 U.S. 140, 152 (1985) (holding that the Sixth Circuit's waiver/forfeiture rule is within its supervisory powers and "[t]here is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review a magistrate's report to which no objections are filed").

## **II. Conclusion**

The Court has carefully reviewed the Report and Recommendation, finds no clear error, and agrees with the findings set forth therein. Accordingly, the Magistrate Judge's Report and Recommendation (R. 10) is hereby ADOPTED. The matter is hereby DISMISSED.

The Court further finds that there is no basis for granting a certificate of appealability in this matter. 28 U.S.C. §2253; *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

IT IS SO ORDERED.

Date: September 6, 2023

s/ *David A. Ruiz*

David A. Ruiz  
United States District Judge